

Message Text

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PAGE 01 USUN N 02021 01 OF 02 241619Z
ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 AF-10 ARA-10 EA-07 EUR-12
NEA-10 ACDA-07 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 EPG-02 COME-00 DODE-00 DOTE-00 EB-07
EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00 H-01 INR-07
INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07
OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06
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R 241530Z JUN 77
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 4188

LIMITED OFFICIAL USE SECTION 1 OF 2 USUN 2021

FROM LOS DEL

E.O. 11652: N/A
TAGS: PLOS
SUBJECT: INFORMAL PLENARY ON ARTICLE 18 (OPTIONAL EXCEPTIONS)
TO PART IV (DISPUTE SETTLEMENT)

1. SUMMARY: THE PRESIDENT INVITED THE ATTENTION OF DELEGATES TO ARTICLE 18(1)(A) (OPTIONAL EXCEPTION AS TO BOUNDAR DELIMITATIONS, INDICATING THE DIFFERENCE IN NATURE BETWEEN SUBPARAGRAPH (A) ON THE ONE HAND, AND SUBPARAGRPHS (B) AND (C) ON THE OTHER. HE OFFERED AN AMENDMENT TO (1)(A) DISTINGUISHING BETWEEN SEA BOUNDARIES AND LAND/INSULAR BOUNDARIES AS WELL AS PROPOSING AMENDMENTS TO (1) (C). THE DISCUSSION FOCUSSED ON THE DESIRE OF SOME STATES TO DELETE THE PROVISION IN ITS ENTIRETY, THOSE WHO WISHED TO RETAIN IT, AND THE NEED IF RETAINED TO ENSURE THAT THE PROVISIO REQUIRING A BINDING REGIONAL OR OTHER THIRD PARTY PROCEDURE PROVIDE A REAL FORUM ACCEPTABLE TO BOTH PARTIES. SEVERAL STATES SUPPORTING A BINDING RESOLUTION OF A DISPUTE UNDER (1) (A) EXPRESSED CONCERN THAT A REGIONAL

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PAGE 02 USUN N 02021 01 OF 02 241619Z

FORUM CHOSEN BY THE DECLARANT WOULD NOT BE ACCEPTABLE TO THE OTHER PARTY ON ETHNIC, POLITICAL OR OTHER GROUNDS. THE USSR PROPOSED AN AMENDMENT REVERSING THE PROVISIO IN (1)(A) SO AS TO MAKE IT PERMISSIVE RATHER THAN OBLIGATORY. THE U.S. PROPOSED A DRAFTING AMENDMENT DESIGNED TO ENSURE A CHOICE OF FORUM ACCEPTABLE TO BOTH PARTIES TO THE DISPUTE. SWITZERLAND, IRAN, PERU AND MADAGACAR SUPPORTED

THE DELETION OF ARTICLE 18 IN TOTO. END SUMMARY.

2. SPEAKERS INCLUDED GREECE, SPAIN, THE USSR, SWITZERLAND, TURKEY, BAHRAIN, THE UK, BULGARIA, TUNISIA, COLOMBIA, SWEDEN, JAPAN, IRAQ, CYPRUS, IRAN, PERU, MADAGASCAR, AND THE U.S.

THE CHAIRMAN (AMERASINGHE) PROPOSED THE FOLLOWING AMENDMENTS TO 18(1)(A), AND, (C), ALTHOUGH RESTRICTING THE DISCUSSION TO (1)(A). HE PROPOSED THAT THE CLAUSE "AND PROVIDED FURTHER THAT ANY COURT OR TRIBUNAL SHALL NOT ENTERTAIN ANY DISPUTE THAT REQUIRES OR OTHERWISE INVOLVES A DETERMINATION OF CLAIMS TO SOVEREIGNTY OR OTHER RIGHTS WITH RESPECT TO CONTINENTAL OR INSULAR LAND TERRITORY" BE ADDED TO THE END OF (1)(A). HE PROPOSED TO DELETE (1)(C) IN TOTO AND REPLACE BY THE FOLLOWING: "DISPUTES INVOLVING MATTERS OF WHICH THE SECURITY COUNCIL IS SEIZED, UNLESS THE COUNCIL DECIDES TO REMOVE THE MATTER FROM ITS AGENDA OR CALLS UPON THE PARTIES TO THE DISPUTE TO SETTLE IT BY THE MEANS PROVIDED FOR IN THE PRESENT CONVENTION." HE FURTHER POINTED OUT THAT THE PROVISIO IN 18(1)(C), RELATING TO LAW ENFORCEMENT ACTIVITIES, AS IT IS CONNECTED WITH ARTICLE 17 AND THE RESTRICTIONS IMPOSED THEREIN, SHOULD BE DISCUSSED IN CONJUNCTION WITH THAT ARTICLE.

3. GREECE, REFERRING TO THE VAGUENESS INHERENT IN ARTICLES LIMITED OFFICIAL USE

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PAGE 03 USUN N 02021 01 OF 02 241619Z

62 AND 71 AND TO THE LACK OF GUIDING PRINCIPLES FOR ANY DETERMINATION OF DELIMITATION ISSUES, OBJECTED TO THE RIGHT OF THE DECLARANT STATE TO INDICATE A PROCEDURE UNDER A REGIONAL ORGANIZATION OF LIMITED ETHNIC COMPOSITION OR OF ANOTHER QUALITY MAKING IT UNACCEPTABLE TO THE OTHER PARTY. IN RESPONSE TO THIS THE CHAIRMAN PROPOSED THAT "IT ACCEPTS" IN THE LAST CLAUSE OF (1)(A) BE CHANGED TO "THE PARTIES ACCEPT." TURKEY STATED THAT AS SUCH DELIMITATION ISSUES WERE DELICATE, JUDICIAL OR ARBITRAL TRIBUNALS WOULD NOT BE SUITABLE, AND PROPOSED THE DELETION OF THE PROVISIO IN (1)(A). SPAIN, SWITZERLAND, NORWAY, COLOMBIA, TUNISIA, IRAQ, AND CYPRUS, EXPRESSING SUPPORT FOR AS BROAD A DCS SYSTEM AS POSSIBLE WITH A MINIMUM OF RESERVATIONS THERETO, STATED THEIR PREFERENCE FOR DELETION OF (1)(A). SPAIN ADDED THAT IT WOULD ACCEPT (1)(A) IF THE BINDING REGIONAL PROCEDURE WERE ACCEPTABLE TO BOTH PARTIES AND PROPOSED THE ADDITION AFTER "THEREIN" OF THE WORDS "A THIRD PARTY PROCEDURE ENTAILING A BINDING DECISION, WHICH IT ACCEPTS FOR THE SETTLEMENT OF SUCH DISPUTES AND TO WHICH ALL PARTIES TO THE DISPUTE HAVE ACCESS". SWEDEN SUPPORTED SPAIN IN THE NEED TO HAVE SUCH A PROCEDURE ACCEPTABLE TO BOTH PARTIES. JAPAN AFFIRED THE NEED TO ENSURE EFFECTIVE

BINDING PROCEDURES IN (1)(A), INDICATED THAT THE PRO-
VISO CLAUSE WAS TOO VAGUE, AND PROMISED TO STUDY THE
CHAIRMAN'S PROPOSAL.

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PAGE 01 USUN N 02021 02 OF 02 241641Z
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FROM LOS DEL

4. THE USSR PROPOSED THAT THE CHAPEAU OF 18(1) BE CHANGED
SO AS TO PROVIDE: "IF AT THE TIME OF SIGNING OR RATIFYING
THE PRESENT CONVENTION OR OTHERWISE EXPRESSING ITS CONSENT
TO BE BOUND BY IT, A CONTRACTING PARTY HAS NOT DECLARED
OTHERWISE, THE PROCEDURES FOR THE SETTLEMENT OF DISPUTES
SPECIFIED IN SECTION II SHALL NOT BE APPLICABLE TO ANY OF
THE FOLLOWING CATEGORIES OF DISPUTES." THE USSR ALSO PRO-
POSED TO CHANGE "SHALL" TO "MAY" IN 1(A) AND TO DELETE
THE WHOLE PROVISIO IN 1(A). AS THE EFFECT OF THESE CHANGES
WOULD BE TO EXCLUDE ALL DISPUTES FROM CDS UNDER 18(A), AN
INTERPRETATION AFFIRMED BY THE SOVIET REPRESENTATIVE IN
HIS RESPONSE TO A QUESTION BY THE PRESIDENT, THE USSR WAS
ONLY SUPPORTED BY BULGARIA.

5. THE UK INDICATED THE DIFFICULTY IN 18(1) THAT BOTH
PARTIES (PER THE CHAIRMAN'S AMENDMENT) WOULD HAVE IN
ACCEPTING THE SAME PROCEDURE AT THE TIME OF RATIFYING OR
OTHERWISE EXPRESSING ITS CONSENT TO BE BOUND, AN IMPOSSI-
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PAGE 02 USUN N 02021 02 OF 02 241641Z

BILITY IN THAT DISPUTES COULD ARISE BETWEEN THE PARTIES SUBSEQUENT TO THE DECLARATION. THE CHAIRMAN INDICATED IN RESPONSE THAT THE CHAPEAU INCLUDED THE PHRASE "OR OTHERWISE EXPRESSING ITS CONSENT TO BE BOUND." THE U.S. PROPOSAL (V. PARAGRAPH 7) ATTEMPTED TO RESOLVE THE POINT RAISED BY THE UK.

6. PERU'S REPRESENTATIVE MADE A STRONG INTERVENTION IN FAVOR OF DELETING ARTICLE 18 IN ITS ENTIRETY, STATING THAT WHAT AMOUNTED TO RESERVATIONS IN ARTICLE 18 SHOULD BE CONSIDERED IN FINAL CLAUSES. HE MADE AN ATTEMPT ALSO TO ADDRESS 18(1)(B) AND (C), BUT THE CHAIRMAN PEREMPTORILY BROUGHT HIM TO ORDER, ASKING HIM TO CONFINE HIS REMARKS TO (1)(A). MADAGASCAR, PERU, AND SWITZERLAND ALSO SUPPORTED THE DELETION OF ARTICLE 18 IN ITS ENTIRETY.

7. THE UNITED STATES REPRESENTATIVE SUPPORTED THE CHAIRMAN'S PROPOSED AMENDMENT TO 18(1)(A) WITH REGARD TO MIXED DISPUTES CONCERNING LAND AND SEA BOUNDARIES, WHICH HE STATED WAS IN CONSONANCE WITH PREVAILING INTERNATIONAL LAW. THE OTHER ISSUE IN 1(A) MIGHT, HOWEVER, PROVE MORE DIFFICULT, IN THAT ALTHOUGH ITS OBJECT WAS TO ALLOW STATES IN A REGION FLEXIBILITY TO SUBMIT THEIR DISPUTES TO A REGIONAL FORUM (E.G., THE OAU, THE COURT OF THE EUROPEAN COMMUNITY), IT WOULD OFTEN PROVE DIFFICULT TO FIND A TRIBUNAL WHICH BOTH PARTIES COULD ACCEPT. THE U.S. PROPOSED THE FOLLOWING CHANGE TO 1(A), DELETING ALL AFTER "SHALL INDICATE" AND REPLACING BY THE FOLLOWING:

"... THAT WITH RESPECT TO SPECIFIED DISPUTES IT ACCEPTS A REGIONAL OR OTHER THIRD PARTY PROCEDURE, ENTAILING A BINDING DECISION, PROVIDED THAT THE OTHER PARTY TO A PARTICULAR DISPUTE HAS ALREADY ACCEPTED THIS PROCEDURE OR IS WILLING TO ACCEPT IT FOR THIS PARTICULAR DISPUTE,

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PAGE 03 USUN N 02021 02 OF 02 241641Z

IT BEING UNDERSTOOD THAT WITH RESPECT TO OTHER DISPUTES THE DECLARANT STATE WILL BE BOUND BY ITS CHOICE UNDER ARTICLE 9."

8. THE CHAIRMAN ADJOURNED THE DISCUSSION OF ARTICLE 18 UNTIL THE NEXT SESSION OF THE INFORMAL PLENARY ON THURSDAY, 23 JUNE 1977.
YOUNG

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Message Attributes

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Disposition Approved on Date:
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